



The Hospital Conversions Act (RIGL Chapter 23-17.14)

Summary of the Statutory Review and Decision Process by RI Department of Health for Proposed Hospital Mergers, Acquisitions, and Affiliations

Background

- Since 1997, certain transfers in ownership, assets, membership interest, authority or control of a hospital in Rhode Island requires approval by both the Department of Health (HEALTH) and the Rhode Island Department of the Attorney General (RIAG) under the authority of the Hospital Conversions Act (HCA) (Chapter 23-17.14).

Purpose of this Chapter

- Assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state;
- Establish a process to evaluate, monitor and review whether the new phenomenon of for-profit corporations gaining an interest in hospitals will maintain, enhance, or disrupt the delivery of healthcare in the state and to monitor hospital performance to assure that standards for community benefits continue to be met;
- Establish a review process and criteria for review of hospital conversions that involve for-profit corporations;
- Establish a review process and criteria for review of hospital conversions that involve only not-for-profit corporations;
- Clarify the jurisdiction and the authority of the department of health to protect public health and welfare and the department of attorney general to preserve and protect public and charitable assets in reviewing both hospital conversions which involve for-profit corporations and hospital conversions which include only not-for-profit corporations; and
- Provide for independent foundations to hold and distribute proceeds of hospital conversions consistent with the acquiree's original purpose or for the support and promotion of health care and social needs in the affected community.

Proposals Subject to the HCA Review

- Proposed transfers of 20% interest or more in a hospital's ownership, assets, membership interest, authority or control

HEALTH's HCA Statutory Criteria for Review and Decision

1. Satisfactory character, commitment, competence, and standing in the community;
2. Sufficient safeguards to assure the affected community continued access to affordable care;
3. Satisfactory evidence to provide health care and access for traditionally underserved populations in the affected community;
4. Procedures or safeguards to insure that ownership interests will not be used as incentives for hospital employees or physicians to refer patients to the hospital;
5. Commitment to assure the continuation of collective bargaining rights and workplace retention;
6. Estimated future employment needs under the conversion, and retraining of employees who may be impacted by the proposed restructuring;
7. Demonstration that public interest will be served, including access to essential medical services needed to provide safe and adequate treatment, and assurance of a balanced health care delivery system;
8. Issues of market share, especially as they affect quality, access, and affordability of services; and
9. Applicants must meet the Conditions of Approval for any previous Conversion under the Act (For-Profit conversions only)

HCA Application and Review Process:

- **Phase One: Application Submission**
 - Review by the Federal Trade Commission (FTC) is required prior to submission
 - 42 elements required in statute
 - Submission of application with questions related to review criteria
 - Signed attestation that application information is complete and accurate to the best of the applicant's knowledge
- **Phase Two: Completeness Review**
 - Within 30 calendar days of the submission of an Initial Application for review, the application is reviewed and the applicants are advised whether the application is either complete or incomplete.
 - If the application is complete at that point, Health can begin its review.
 - If the application is determined to be incomplete, the applicants are advised of the additional information required to complete the application.
 - The applicants have 30 working days to submit the additional information specified.
 - Within 10 working days of the submission of this additional information, the application is reviewed and the applicants are advised whether the application has been determined to be either a complete application accepted for review or rejected for insufficiency, without prejudice for resubmission.

- **Phase Three: Criteria Review**

- HEALTH reviews the application separately but concurrently with the RIAG review.
- Public Process:
 - RIAG determines which components of the application are confidential.
 - HEALTH posts the non-confidential portion of the application on the HEALTH website in order to make this information available for inspection by the public.
 - Under the statute, HEALTH is required to hold and advertise one informational meeting, which is open to the public, and to provide a written public comment period. HEALTH may elect to hold additional informational meetings.
 - Information about the opportunity to provide written comment and informational meetings is widely distributed and publicly advertised.
- Investigations
 - Conduct investigations to gather information to inform its decision-making.
- Payment for Expert Consultants
 - HCA authorizes the Department's use of experts on a consulting basis to assist in the review of applications, with payment required by the applicants.

- **Phase Four: Decision**

- Within 180 days of the determination that an application is complete, the Director of Health must make and issue a decision on an HCA application, based on HEALTH's statutory criteria.
- The Director's decision under the HCA may be:
 - To approve the application,
 - To reject the application, or
 - To approve the application with conditions

Other Provisions within the HCA Statute:

- Hospital Charity Care Requirements
- Prior approval requirement to close or reduce hospital emergency department or primary care ("Reverse CON")
- Limits to acquisitions by for-profit hospitals
- Provision for the creation of a conversion foundation in cases of acquisition by for-profit hospitals

- Whistleblower protection
- Penalties for failure to comply with the Chapter

The HCA Review Process and the Change in Effective Control (CEC) Review Process Differ in Several Major Areas

(CEC information is available at <http://www.health.ri.gov/hsr/healthsystems/index.php>):

- HCA approval is specific to proposed hospital affiliations, mergers, or acquisitions, including for-profit and not-for-profit hospitals; whereas CEC approval is required by many different types of health care facilities proposing to change ownership or control;
- HEALTH is directed to consider eight criteria under an HCA review and four criteria under a CEC review. Three of the CEC criteria are similar to HCA criteria.
- Under the HCA application and review process, HEALTH has the ability to review confidential information from the applicants, and protect confidential and proprietary information from disclosure. The CEC application and review process is entirely open to the public;
- Once an application is deemed complete, under HCA, HEALTH has 180 days to render a decision, whereas the time frame for consideration of an application for CEC is shorter, usually about 90 days; and
- The HCA statute specifies 42 questions that applicants are required to answer, whereas the CEC statute does not specify application questions.
- The HCA authorizes HEALTH's use of experts on a consulting basis to assist in the review of applications, with payment required by the applicant. Under a CEC review, HEALTH must pay for any experts using General Revenue dollars, with the exception of outside legal consultation.
- HEALTH staff conducts the HCA review with the assistance of consultants as needed, whereas the Health Services Council conducts the review of a CEC application with staffing from HEALTH staff and the assistance of consultants as needed.

The information in this document is an unofficial synopsis of certain provisions of the Hospital Conversion Act, Chapter 23-17.14 of the Rhode Island General Laws (RIGL) and the Health Facilities Licensing Act, Chapter 23-17-14 RIGL, and should not be considered a formal interpretation or legal analysis issued by HEALTH. This synopsis should not be relied upon for completeness or accuracy as a legal document.